IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1164 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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UNITED INDIA FIRE AND GENERAL INSURANCE CO.LTD. - Appellant(s)
Versus
HEMTUJI LAXMANJI DABHI & 2 - Defendant(s)

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Appearance :
MR RR MARSHALL for Appellant(s) : 1,
MR SC VAKHARIA for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgment and award dated 02.04.1985 passed by the Motor Accident Claim Tribunal, Mehasana in MACP No. 635 of 1982 whereby the Tribunal awarded compensation to the tune of Rs. 22,400/- to the original claimants.

2. The present respondent filed an application claiming for compensation to the tune of Rs. 50,000/- in respect of the accident which occurred when the respondent's son Bakaji alia Aswin had gone to the field of one Shri

Shivaji and was standing near a hillock. At that time, the original respondent no.1 was driving the truck in the reverse direction and lost control thereby running over the legs of Bakaji. The original claimant's son received fractures on both the legs. The Tribunal after hearing the parties passed the aforesaid award.

4. I have gone through the award of the Tribunal. The Tribunal has relied on the complaint lodged against the driver of the tractor at Ex. 28 and the panchnama at Ex. 29 whereby it is clear that the incident had taken place on account of the rash and negligent driving of the tractor driven by original opponent no.1.

4.1 However, I am of the opinion that before the insurance company can be made liable to answer the claim of damages arising out of the accidental injuries caused to a third party on account of the use of the insured vehicle it must be shown that the vehicle was driven in a rash and negligent manner in a public place or the root cause of the accident must have originated during the time when the vehicle was used in a public place. In the present case, the accident has taken place in a private place, which is the field of the father of original respondent no.1. The Tribunal in para 14 of the award

has stated that a field is a place where everybody has got an access. I am not in agreement with the reasonings of the Tribunal as in the present case, the field was the private property of the original respondent no.2. In that view of the matter, the Tribunal ought to have exonerated the insurance company from the said liability.

5. In the premises aforesaid, appeal is allowed. The award of the Tribunal is quashed and set aside qua liability of the insurance company. The award of the Tribunal is modified accordingly. It is made clear that it will be open for the original claimants to recover the amount from the owner of the vehicle. The amount deposited by the insurance company by way of Fixed Deposit, if any, shall be refunded to the insurance company. It is further made clear that in case the amount has already been withdrawn by the original claimants, it will be open for the insurance company to recover the same from the owner of the vehicle. No order as to costs.

(K.S. JHAVERI, J.)

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